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RYAN FLYNN
Cabinet Secretary

BUTCH TONGATE
Deputy Secretary

March 12, 2014

Mr. Jerry Saunders
U. S. Environmental Protection Agency
1445 Ross Avenue
Suite 1200
Mail Code: 6EN
Dallas, TX 75202-2733

Dear Mr. Saunders,

Thank you for taking the time to discuss New Mexico's Drinking Water Enforcement Program with me and my staff on Friday, February 14, 2014. As discussed during the meeting we are presenting a summary of where we are with the Drinking Water Bureau's (DWB) Enforcement Program and a plan on how the program will proceed.

EPA Enforcement in NM

First, I would like to address the list of systems provided on March 3rd upon which the United States Environmental Protection Agency (EPA) plans to enforce by the end of this month. The table below provides the current status of each of the systems and any existing or pending actions.

Public Water System	Compliance Issue	Current Status
Nambe Headstart	Arsenic, Selenium	System is currently under Settlement Agreement and is meeting the terms of the agreement. Treatment system was been installed February 2013. Terms of settlement agreement require that system meet arsenic and selenium Maximum Contaminant Levels (MCLs) by March 31, 2014 and must have a Running Annual Average (RAA) that meets standards by March 31, 2015. It is anticipated that the system will request an extension due to technical issues that are actively being addressed. DWB recommends no additional enforcement action by EPA.
Loma Escondida	Arsenic	System is under Administrative Order (AO) but not

		currently meeting the terms of the order due to technical issues – point of use units were proposed but not approved by DWB. System plans to submit a request for extension to allow time to submit application for modification to get new point of use units reviewed and approved by DWB.
La Familia Medical Center	Nitrate	Administrative Compliance Order (ACO) drafted, pending review and approval. System is constructing lines to connect to another system and anticipates construction will be completed by October 2014 at which time the contaminated well will be abandoned. System is actively addressing compliance issue and therefore DWB recommends no additional enforcement by EPA.
Piñon Hills RV Park	Total Coliform Rule	The owner of this system disputes the designation as a public water system after having sold a portion of the property. DWB has submitted a request to legal department to assist with final determination due to fact that property was sold to relative and may still be operated by original owner as one system with two wells. DWB would welcome EPA assistance with a final determination. Owner is hostile about being regulated by state or federal entity. DWB would like to share more on the history of this system with EPA prior to any enforcement action.
Lordsburg Water Supply	Fluoride and other Rule Violations	Significant deficiencies have been addressed and updated in SDWIS. DWB ran Enforcement Targeting Tool (ETT) on March 5, 2014 and system currently has less than 9 points and is no longer on DWB's ETT list. Last two quarters of 2013 Fluoride was below MCL. DWB recommends no enforcement action by EPA.
El Rancho Mobile Home Park	Various Rule Violations	System is under AO. DWB sent letter for not completing corrective actions within the allocated timeframe of the AO. System responded indicating they need to submit application for modification for new proposed treatment. DWB has no objection to EPA enforcement action.

Enforcement Targeting Tool List

On March 4, 2014 the DWB received EPA's version of the January ETT List. As indicated in the letter, the data used to develop the list is greater than 5 months old and therefore based on outdated information. The DWB was undergoing a massive reorganization and was down more than seventeen staff during that time period which resulted in a back log of data entry and ability to follow-up on many compliance issues that have since been addressed or will be in the near future as additional staff are hired. The DWB believes any enforcement actions taken by EPA should be based on current data and information and asks that we continue to closely coordinate prior to any actions being taken to ensure no unnecessary actions occur.

Additionally, the DWB would like to work with EPA to resolve some issues and questions that have been identified by the new Enforcement Coordinator (EC) that are creating discrepancies between the ETT List that EPA develops and DWB's results. The issues include the following:

- a. Timing: As mentioned above, it is understood that the data used by EPA to develop the ETT list are often older than the data NMED's DWB uses to develop the ETT list. EPA data can be a quarter or more behind NMED DWB data. At EPA Region VI's 5 States Meeting in January 2014, it was mentioned that EPA is working to address this issue. Currently, both EPA and DWB staff have to spend time explaining and addressing the discrepancies related to the timing issue. This time could be spent in a more productive manner if the data used by both parties were more closely synchronized. The DWB would like to work with EPA to identify a solution to this problem. One potential solution is to do a manual data upload prior to EPA developing their ETT list.
- b. Safe Drinking Water Information System (SDWIS) Codes: In reviewing the EPA's ETT results, it was discovered that a code being used by DWB compliance staff to clear violations was not clearing the violation in the system EPA uses to develop the ETT list. The EC is currently working with compliance staff to address this issue, which is expected to result in a decrease in the number of systems on the ETT list. It is unclear if additional data management procedures are impacting the results of the ETT and DWB would like to continue to address these issues with EPA as they are identified.
- c. Data Entry Back-log: Due to the high number of vacancies within the bureau there is a back-log of data entry work that is resulting in systems having a higher number of points. PWSS staff have been directed to shift priorities to minimize the back-log. DWB is in the process of hiring additional Public Water System Supervision compliance staff and anticipates that the data back-log can be addressed over the next 6-8 months with a goal to be completely caught up by October 1, 2014.
- d. Sanitary Survey Deficiencies: The manner in which Sanitary Survey Deficiencies are assigned points in the ETT process results in many systems receiving a large number of points that are typically administrative deficiencies and not related to public health. Once addressed, the points go away, but each system is allowed a specified timeframe to address the deficiencies and may remain on the ETT list for multiple quarters. This process will inherently result in high ETT numbers following each Sanitary Survey cycle. If the goal of the ETT is to identify the highest risks to public health and enable states to enforce on the most pressing issues, then the manner in which these points are assessed is in conflict with the intent of the tool. The DWB would like to work with EPA to determine if these deficiencies are being managed correctly in DWB SDWIS and ensure the ETT is working as intended.

DWB Enforcement Plan

Attachment 1 provides a summary of all active Administrative Orders (AOs) issued by the DWB. The new EC is reviewing all active AOs to determine the current status and future course of action with the priority given to health related violations. Due to the multiple staff turnovers in the last 18 months, the EC is conducting extensive research to ensure all information has been gathered and updated for each active AO. This review has been completed for all health related violations and we anticipate the review of non-health related violations to be completed by May 2014. Once completed, the EC will actively monitor the milestones to be achieved for each active AO and will provide updates at the quarterly Enforcement meetings with EPA and DWB.

Attachment 2 provides the most recent version of the NMED ETT List run on March 6, 2014, and as you can see varies greatly from the ETT List provided by EPA dated January 2014. The DWB would like to continue to work with EPA to address the data issues and future enforcement actions and would respectfully request that we coordinate prior to any actions being taken by EPA. This will ensure that any enforcement actions that are pursued by either DWB or EPA are based on up to date and quality data and information and will eliminate the chance of a system receiving a violation from both DWB and EPA.

We look forward to continue working with you to ensure compliance with the Safe Drinking Water Act and NM's Drinking Water Regulations. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie Stringer", with a stylized flourish at the end.

Stephanie Stringer, Chief
Drinking Water Bureau
New Mexico Environment Department

CC: Tom Blaine, Director NMED Environmental Health Division (via e-mail)
Tonia Biggs, EPA (via e-mail)
Maria Medina, DWB Enforcement Coordinator (via e-mail)